

FISCAL NOTE

SB 881 - HB 1567

March 13, 2003

SUMMARY OF BILL: Revises the limitations of a contractor's liability under state contracts as follows:

- limits the total liability of a contractor, except for personal injury or death, to the price of the particular products sold under contract with respect to which losses or damages are claimed, whether the action is for breach of contract, warranty, negligence, strict liability in tort or otherwise. The State's sole remedy is to request that the contractor, at his or her option, to either refund the purchase price, repair or replace any products that are not as warranted. However, in no event will the contractor be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings, or other incidental or consequential damages to the full extent as what may be disclaimed by law.
- limits the statute of limitations by the State to one-year following the event leading to the cause of action, with the exception of money due upon an open account. Such provision(s) shall not apply if determined by a court of competent jurisdiction, including appellate review if pursued, that such provision(s) are a violation of the law or constitution of the State.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact: Reduces the potential recovery, by the state, for breach of contract by an amount estimated to exceed \$5,000,000

Estimate assumes:

- The Department of General Services has 24 service contracts with a total value of \$52,393,584. The Purchasing Division of the Department of General Services issues over 200 statewide contracts and over 2,000 term contracts annually. The bill will limit the potential recovery to the value of the products sold under the contract. Under current law, the minimum recovery for a major breach would be twice the value of the contract.
- In 2002 the state approved 787 *fee-for-service* contracts for a total in excess of \$6,000,000,000 for an average of over \$8,000,000 per contract. The difference between the maximum limitation of liability under current law and the limitation required by this bill would be over \$8,000,000 per contract, since currently recovery for damages are twice the value of the contract.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James A. Davenport, Executive Director